IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. LINO FLORES, Petitioner.	)	2 CA-CR 2007-0141-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR10992

Honorable William J. O'Neil, Judge

REVIEW GRANTED; RELIEF DENIED

Lino Flores — Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Lino Flores and two codefendants each pled guilty to first-degree murder for their roles in the stabbing death of a fellow inmate at the Arizona State Prison in 1984. Flores was sentenced to life in prison without possibility of parole for twenty-five years and was ordered to serve that sentence consecutively to the sentences he was serving when the murder occurred. The Arizona Supreme Court affirmed Flores's conviction and

sentence. *State v. Flores*, No. 6288 (Ariz. Sup. Ct. memorandum decision filed Nov. 8, 1984).

¶2 In 1996, Flores filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., alleging that a newly discovered witness to the killing, another inmate, would testify Flores and his codefendants had acted in self-defense. The trial court summarily dismissed the petition, and we denied relief on the ensuing petition for review. *State v. Flores*, No. 2 CA-CR 97-0284 (memorandum decision filed July 23, 1998). We noted that the victim had been stabbed nineteen times and that the supreme court had reviewed the record on appeal and determined Flores's plea had been informed, voluntary, and supported by a factual basis.

¶3 In 2006, Flores filed a successive notice of post-conviction relief pursuant to Rule 32, this time asserting newly discovered evidence. In particular, Flores claimed to have learned in 2005 that the prosecutor in his case had "knowingly withheld crucial material evidence (that its only witness[,] Correctional Officer Warren, was reluctant to testify against the Petitioner)." Had he known of Warren's reluctance to testify, Flores alleged, he would not have elected to plead guilty but would have proceeded to trial. The trial court appointed counsel who filed a "notice of no colorable Rule 32 claim." In it, counsel acknowledged and analyzed the claim Flores raises here but concluded the claim lacked merit.

¶4 The trial court granted Flores leave to file a supplemental, pro se petition for post-conviction relief. In his supplemental petition, Flores expanded on the assertion in his

Rule 32 notice, claiming he had not learned until September 2005 that the prosecutor in his case had conducted a second pretrial interview of correctional officer Warren without having disclosed to the defense either the fact or the substance of the second interview. The relevant evidence that had emerged in that interview, Flores alleged, was Warren's statement that he was reluctant to testify about the prison stabbing he had witnessed "because he had seen his father stab his mother to death as a young teenager." Flores contended this information, had he known it earlier, would have persuaded him to go to trial instead of pleading guilty, would have undermined Warren's credibility as a witness, and thus "would have convinced a reasonable jury that [Flores] was not guilty beyond a reasonable doubt."

¶5 The trial court denied relief summarily, finding Flores had failed to state a colorable, nonprecluded claim. Noting Flores had "ma[de] no allegation that this witness who had been previously disclosed had altered his testimony or recanted or made statements that were inconsistent," the court concluded Flores had failed to prove by a preponderance of the evidence that the newly discovered material facts he alleged would probably have changed the "verdict or sentence." We interpret the trial court's statement to mean it concluded that Warren's stated reluctance to testify, born of witnessing a similiar traumatic event earlier in his life, was not likely to have materially affected the state's ability to prove its case against Flores beyond a reasonable doubt, had Flores in fact proceeded to trial.

¶6 This court will not disturb a trial court's ruling on a petition for post-conviction relief unless the lower court manifestly abused its discretion. *State v. Watton*,

164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). And the determination whether a post-conviction claim is colorable rests largely in the trial court's discretion. *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988); *State v. Adamson*, 136 Ariz. 250, 265, 665 P.2d 972, 987 (1983) ("The trial judge was in a much better position than we are to determine the weight to be given the defendant's claims in his petition and whether or not the allegations taken as true would change the verdict."). We find no abuse of the trial court's discretion in concluding here that Flores failed to state a colorable claim of newly discovered evidence for purposes of Rule 32.1(e).

¶7 Accordingly, although we grant the petition for review, we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge